

CSD 1160 [05/15/03]

Name, Address, Telephone No. & I.D. No.

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FILE NO. W-0615**UNITED STATES BANKRUPTCY COURT**

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re Thomas Gene Reiter,

Kathleen Anne Jaynes,

Debtor.

BANKRUPTCY NO.

08-04620 LT-7

Mortgage Electronic Registration Systems, Inc., as nominee for
Greenpoint Mortgage Funding, Inc., its successors and assigns,

Moving Party

RS NO.

EAT1

Thomas Gene Reiter, Kathleen Anne Jaynes,
James L. Kennedy, Trustee,

Respondent(s)

MOTION FOR RELIEF FROM AUTOMATIC STAY **REAL PROPERTY** **PERSONAL PROPERTY**

Movant in the above-captioned matter moves this Court for an Order granting relief from the automatic stay on the grounds set forth below.

1. A Petition under Chapter 7 11 12 13 was filed on 5/28/2008.

2. Procedural Status:

a. Name of Trustee Appointed (*if any*): James L. Kennedy

b. Name of Attorney of Record for Trustee (*if any*):

c. (*Optional*) Prior Filing Information:

Debtor has previously filed a Bankruptcy Petition on: _____.

If applicable, the prior case was dismissed on: _____.

d. (*If Chapter 13 case*): Chapter 13 Plan was confirmed on _____ or a confirmation hearing is set for _____.

Movant alleges the following in support of its Motion:

1. The following real property is the subject of this Motion:

a. Street address of the property including county and state:

2394 Grand Avenue

San Diego, California 92109

b. Type of real property (e.g., single family residence, apartment building, commercial, industrial, condominium, unimproved): Condominium

c. Legal description of property is attached as Exhibit A.

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- d. If a chapter 11 or 13 case and if non-payment of any post-petition payment is a ground for relief, attach the accounting required by Local Bankruptcy Rule 4001-2(a)(4) as Exhibit B.
- e. *Fair market value of property as set forth in the Debtor's schedules: \$ 260,000.00.
- f. *Nature of Debtor's interest in the property: Borrower
2. The following personal property is the subject of this Motion (*describe property*):
- a. Fair market value of property as set forth in the Debtor's schedules: \$ _____.
- b. Nature of Debtor's interest in the property:
3. *Fair market value of property according to Movant: \$ 260,000.00.
4. *Nature of Movant's interest in the property: Beneficiary of a first deed of trust
5. *Status of Movant's loan:
- | | | |
|---|----------------------|----------------------|
| a. Balance owing on date of Order for Relief: | \$ <u>285,492.49</u> | |
| b. Amount of monthly payment: | \$ <u>987.98</u> | |
| c. Date of last payment: | <u>3/2008</u> | |
| d. If real property, | | |
| i. Date of default: | <u>4/1/2008</u> | |
| ii. Notice of Default recorded on: | <u>Not Recorded</u> | |
| iii. Notice of Sale published on: | <u>Not Recorded</u> | |
| iv. Foreclosure sale currently scheduled for: | <u>N/A</u> | |
| e. If personal property, | | |
| i. Pre-petition default: | \$ _____ | No. of months: _____ |
| ii. Post-petition default: | \$ _____ | No. of months: _____ |
6. (*If Chapter 13 Case, state the following:*)
- | | |
|-------------------------------------|----------|
| a. Date of post-petition default: | \$ _____ |
| b. Amount of post-petition default: | \$ _____ |
7. Encumbrances:
- a. Voluntary encumbrances on the property listed in the Schedules or otherwise known to Movant:

Lender Name	Principal Balance	(IF KNOWN) Pre-Petition Arrearages Total Amount - # of Months		Post-Petition Arrearages Total Amount - # of Months	
1st: Movant	<u>285,492.49</u>	<u>2,185.42</u>	<u>2.00</u>	<u>1,782.21</u>	<u>1.00</u>
2nd:					
3rd:					
4th:					
Totals for all Liens:	\$ <u>285,492.49</u>	\$ <u>2,185.42</u>		\$ <u>1,782.21</u>	

- b. Involuntary encumbrances of record (e.g., tax, mechanic's, judgment and other liens, lis pendens) as listed in schedules or otherwise known to Movant:
 See attached page, if necessary.

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8. Relief from the automatic stay should be granted because:
- Movant's interest in the property described above is not adequately protected.
 - Debtor has no equity in the real property personal property described above and such property is not necessary to an effective reorganization.
 - The property is "single asset real estate", as defined in 11 U.S.C. § 101(51B), and 90 days (or _____ days as ordered by this court) have passed since entry of the order for relief in this case, and
 - the Debtor/Trustee has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; and
 - the Debtor/Trustee has
 - not commenced monthly payments to each creditor whose claim is secured by the property (other than a claim secured by a judgment lien or by an unmatured statutory lien), or
 - commenced payments, but such payments are less than an amount equal to interest at a current fair market rate on the value of each creditors' interest in the property.
 - *Other cause exists as follows (*specify*): See attached page.

When required, Movant has filed separate Declarations pursuant to Local Bankruptcy Rule 4001-2(a)(5) and (6).

Movant attaches the following:

- Other relevant evidence: The debtors are surrendering their right, title and interest in the real property.
- (*Optional*) Memorandum of points and authorities upon which the moving party will rely.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

- Relief as requested.
- Other: That the 10-day stay described by Bankruptcy Rule 4001(a)(3) be waived.

Dated: July 3, 2008

/s/ Edward A. Treder

[Attorney for] Movant
EDWARD A. TREDER, BAR NO. 116307

*Separately filed Declaration required by Local Bankruptcy Rule 4001-2(a)(5).

PROPERTY ADDRESS

2394 GRAND AVENUE
SAN DIEGO, CA 92109

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SAN DIEGO,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A CONDOMINIUM COMPRISED OF:

PARCEL 1: AN UNDIVIDED 1/28TH INTEREST IN AND TO LOT 1 OF INTERSTATE PROPERTIES UNIT NO. 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 6463, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 27, 1969.

EXCEPTING THEREFROM THE FOLLOWING:

(A) ALL UNITS, BALCONIES, PATIOS, COVERED PARKING SPACES AND OPEN PARKING SPACES AS SHOWN UPON THE AMENDED CONDOMINIUM PLAN OF LA PORTOLA, RECORDED ON FEBRUARY 28, 1975 AS FILE/PAGE NO. 75-046535 OF OFFICIAL RECORDS OF SAN DIEGO COUNTY.

PARCEL 2: UNIT 2394 AND CP41 AND 42 AS SHOWN ON THE AMENDED CONDOMINIUM PLAN ABOVE REFERRED TO.